



**NIXON PEABODY LLP**  
ATTORNEYS AT LAW

100 Summer Street  
Boston, Massachusetts 02110-2131  
(617) 345-1000  
Fax: (617) 345-1300

Robert L. Dewees, Jr.  
Direct Dial: (617) 345-1316  
Direct Fax: (866) 947-1870  
E-Mail: [rdewees@nixonpeabody.com](mailto:rdewees@nixonpeabody.com)

August 16, 2006

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

Re: Bay State Gas Company, D.T.E. 06-42

Dear Ms. Cottrell:

Enclosed is the Response of Bay State Gas Company to the Attorney General's Motion for Reconsideration.

Very truly yours,

Robert L. Dewees, Jr.

RLD/tlm  
Enclosure

cc: John J. Geary, Hearing Officer  
Alexander J. Cochis, Asst. Attorney General  
Jamie M. Tosches, Asst. Attorney General

Petition of Bay State Gas Company  
for a precedent agreement for  
firm natural gas storage and related  
agreements.

## I. INTRODUCTION

The Motion should be denied.

**II. THE MOTION SHOULD BE DENIED BECAUSE IT DOES NOT PRESENT SUFFICIENT GROUNDS FOR RECONSIDERATION OF THE DEPARTMENT'S ORDER.**

The Department may grant a motion for reconsideration if its treatment of an issue was the result of mistake or inadvertence or if extraordinary circumstances warrant a fresh look at the record. Such a motion should present previously unknown or undisclosed facts. A motion for reconsideration should not reargue issues considered and decided in the main case. AG Motion, pp. 1-2. However, this standard is not met by the Attorney General's Motion.

The arguments in the Motion were raised by the Attorney General during the proceeding. They were considered and rejected by the Department, with the explanation that the Department has interpreted the two-year long-range resource plan filing period as beginning with the final order in the most recent prior plan proceeding. Order, D.T.E. 06-42, pp. 7, 9. As Bay State indicated in its Reply to the Attorney General's Brief in this proceeding, the Department's long-standing rules require gas companies to file long-range resource plans within two years from the date of the Department's final order on a company's prior long-range resource plan.

For example, KeySpan Energy Delivery New England ("KeySpan") filed a long-range plan on November 30, 2001. The Department issued its order on January 30, 2003 directing KeySpan to file its next plan approximately two years after the order, by March 1, 2005. KeySpan Energy Delivery New England, D.T.E. 01-105 (2003). Fitchburg Gas and Electric Light Company ("FG&E") submitted its long-range plan on May 9, 2003, and the Department's order on August 13, 2004 directed FG&E to file its next plan approximately two years thereafter, or by June 30, 2006. Fitchburg Gas and Electric Light Company, D.T.E. 03-52 (2004). Berkshire Gas Company ("Berkshire") filed its

long-range plan with the Department on March 15, 2002, and in its February 5, 2003 order, the Department directed Berkshire to file its next long-range resource plan by January 31, 2005, approximately two years after the order. Berkshire Gas Company, D.T.E. 02-17 (2003). Similarly, Blackstone Gas Company (“Blackstone”) filed a plan on October 25, 2000, and in an order dated May 4, 2001, the Department directed Blackstone to file its next long-range plan with the Department by May 1, 2003, two years later. Blackstone Gas Company, D.T.E. 00-81 (2001).

It is clear that there was no mistake or inadvertence on the Department’s part, because the Department considered the same arguments made by the Attorney General with respect to the timing of plan filings in a more recent order than D.T.E. 06-42 and rejected those arguments again. Bay State Gas Company, D.T.E. 06-7 (July 31, 2006), pp. 10, 17.

No evidence is presented in the Motion that demonstrates Department mistake or inadvertence or any extraordinary circumstance that would make reconsideration appropriate. Further, the Attorney General has presented no previously unknown or undisclosed facts that would impact the the Department’s ruling in D.T.E. 06-42.

**III. THE DEPARTMENT’S RULES ON THE TIMING OF GAS RESOURCE PLAN FILINGS ARE REASONABLE AND CONSISTENT WITH ITS AUTHORITY TO ESTABLISH RULES UNDER CHAPTER 164 OF THE GENERAL LAWS.**

The Department’s rules for long-range resource plan filings are reasonable. Long-range resource plans filed by gas companies contain detailed information about the reliability, integrity and cost of gas supplies for the company filing the plan. Because of the complexity of these plans, the Department’s review necessarily takes a number of months. The procedure proposed by the Attorney General, where a company would file its plan every two years regardless of, and without having the benefit of, the

Department's review and findings on the prior plan, is impractical and would reduce the benefits of the Department's review that occurs with the current plan filing procedures. The Attorney General's proposal would result in a pancaking of plan filings without gas companies having the benefit of the Department's analysis, or an opportunity to review and modify their resource plans based on such analysis. Adopting the Attorney General's proposal would also increase the cost and administrative burden for the Department. In contrast, the current procedure allows the Department time to review a company's resource plan, and then allows a company time to respond to the Department's order in its next resource plan filing.

The Department's filing procedure is consistent with the statute under which resource plans are submitted and an orderly and efficient review of gas company long-range resource plans. The General Court recognized that some flexibility might be required with respect to review of such plans and permitted the Department to exempt gas and electric companies from the provisions of M.G.L. c. 164, § 69I, after notice and hearing, if an alternative process is in the public interest. M.G.L. c. 164, § 69I. The Department directives requiring the filing of long-range resource plans two years after a final order in the prior long-range plan proceeding are such an alternative. Those directives are issued after hearings are held on a plan where issues with respect to the contents of, and the appropriate time for, the next filing are considered. The Department has broad powers to establish rules consistent with M.G.L. c. 164. Cambridge Electric Light Company v. Department of Public Utilities, 363 Mass. 474, 494 (1973). In addition, the Department has considerable discretion in interpreting a statute it is charged with enforcing. Consolidated Cigar Corporation v. Department of Public Health, 372 Mass. 844, 850 (1977).


**IV. THE DEPARTMENT, FOR PRACTICAL PURPOSES, IS UNABLE TO GRANT THE RELIEF THE ATTORNEY GENERAL SEEKS.**


In his Motion, the Attorney General requests that the Department order Bay State to file its next plan "immediately." However, Bay State's long-range resource plan filing requires considerable time and effort to prepare. Bay State would be unable to file a plan "immediately" or before the commencement of the fourth quarter of 2006.

**V. CONCLUSION**

For the above reasons, Bay State requests that the Department deny the Attorney General's Motion for Reconsideration.

Respectfully submitted,  
BAY STATE GAS COMPANY  
By its Attorneys,

  
\_\_\_\_\_  
Patricia M. French  
Senior Attorney  
NiSOURCE CORPORATE SERVICES  
300 Friberg Parkway  
Westborough, MA 01581  
(508) 836-7394  
Fax (508) 836-7039

  
\_\_\_\_\_  
Robert L. Dewees, Jr.  
NIXON PEABODY LLP  
100 Summer Street  
Boston, MA 02110  
(617) 345-1000  
Fax (866) 947-1870

August 16, 2006

### CERTIFICATE OF SERVICE

I certify that I served today a copy of the attached Response of Bay State Gas Company to Attorney General's Motion for Reconsideration by hand delivery, first class mail, postage prepaid or electronically on the Department of Telecommunications and Energy and all parties on the service list on file with the Secretary of the Department of Telecommunications and Energy for this proceeding.

Dated at Boston, Massachusetts this 16<sup>th</sup> day of August, 2006.

Wm + L. Jewell